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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

MARK LESLIE, KENNETH E.  
LONCHAR, PAUL A. SALLABERRY,  
MICHAEL M. CULLY AND DOUGLAS  
S. NEWTON,

Defendants.

Case No. 5:07-cv-03444-JF

**JOINT CASE MANAGEMENT  
STATEMENT**

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Date: October 5, 2007  
Time: 10:30 a.m.  
Dept.: Courtroom 3, 5<sup>th</sup> Floor  
Judge: Honorable Jeremy D. Fogel

Date Complaint Filed: July 2, 2007  
Date Set For Trial: None

Pursuant to the Northern District's Standing Order and the Court's order dated July 2, 2007, plaintiff Securities and Exchange Commission (the "Commission") and defendants Mark Leslie, Kenneth E. Lonchar, and Paul A. Sallaberry respectfully submit this Joint Case Management Statement.

1       **1. Jurisdiction and Service:**

2           This is a civil enforcement action brought by the Commission alleging fraud, in violation  
3 of the federal securities laws. The Court has jurisdiction over this action under Section 22(a) of  
4 the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and  
5 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and (e) and  
6 78aa]. The Commission alleges that the non-settling defendants, Mark Leslie, Kenneth E.  
7 Lonchar, and Paul A. Sallaberry, have made use, directly or indirectly, of the means or  
8 instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities  
9 exchange, in connection with the transactions, acts, practices, and courses of business alleged in  
10 the Complaint. Venue is proper in this Court under Section 22(a) of the Securities Act [15 U.S.C.  
11 § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa], because certain of the acts or  
12 transactions constituting the violations alleged herein occurred in this judicial district.

13           There are no issues regarding personal jurisdiction or venue, and there are no other parties to  
14 be served.

15       **2. Facts:**

16       **A. Plaintiffs' Brief Description of the Case:**

17           In summary, the Commission's complaint alleges as follows:

18           This is a financial fraud case against former senior managers and finance managers of Veritas  
19 Software Corporation ("Veritas"), a California software maker. Defendants Leslie, Lonchar, and  
20 Sallaberry knowingly participated in a fraudulent scheme by artificially inflating Veritas' publicly  
21 reported revenues and earnings through a round-trip transaction with America Online, Inc.  
22 ("AOL") in 2000 and by lying to Veritas' independent auditors. In addition, Lonchar, with the  
23 participation and assistance of others, intentionally manipulated and distorted Veritas' reported  
24 earnings through "smoothing" its financial results from at least 2000 through 2002. Lonchar also  
25 lied to and/or failed to disclose to Veritas' independent auditors their fraudulent conduct. As a  
26 result of the defendants' actions, Veritas reported materially false and misleading financial results  
27 in periodic reports filed with the Commission and other public statements from at least 2000  
28

1 through 2003 and in its January 28, 2004 earnings release of fourth quarter and annual results for  
2 2003.

3 **B. Defendants' General Description of the Case:**

4 The Defendants categorically deny the charges lodged against them by the SEC. Specifically,  
5 Defendants deny that the revenue Veritas reported related to the AOL transactions was artificially  
6 inflated. Defendants further deny that they made any material misstatements or omissions to  
7 Veritas' auditors regarding the AOL transactions, or that any of their alleged actions resulted in  
8 materially false and misleading financial results being filed on Veritas' behalf with the  
9 Commission. Finally, Defendants deny that the alleged misstatements and related accounting  
10 treatment of the AOL Deals were material to Veritas' financial statements, to the investment  
11 decisions of ordinary investors, or to Veritas' stock price.

12 1. Defendant Mark Leslie's Further Description:

13 Mr. Leslie further states that he was not aware that the accounting treatment applied to the  
14 AOL transactions in question was incorrect, if in fact it was; he did not falsify any corporate  
15 records; he did not conceal any information from auditors or the investing public; and the  
16 financial statements filed by Veritas Software Corporation did not contain materially false,  
17 misleading statements, as the SEC has alleged. Further, Mr. Leslie denies that he possessed the  
18 necessary scienter to violate any of the securities laws – including, among other things, the  
19 requisite knowledge of the pertinent accounting rules and their resulting impact on Veritas'  
20 financial statements. Mr. Leslie denies that he aided and abetted a primary violation of the  
21 securities laws by Veritas.

22 2. Defendant Kenneth Lonchar's Further Description:

23 Mr. Lonchar states that the annual and quarterly financial statements filed by Veritas  
24 between 2000 and 2002 (including the 2002 certification) were not materially false or  
25 misleading. Mr. Lonchar further states that the AOL transaction was properly booked and  
26 accounted for by Veritas and denies that the AOL transaction was "contingent." Additionally,  
27 Mr. Lonchar denies that he participated in any "fraudulent schemes" or "schemes to defraud" the  
28

1 investing public or that he directed any practices to manage or manipulate Veritas' revenue or  
2 earnings either upward or downward or to produce "museum quality" financial results (as alleged  
3 by the SEC). Additionally, Mr. Lonchar denies that he possessed the required mental state to  
4 commit any of the alleged violations and states that at all times he acted in good faith. Mr.  
5 Lonchar denies that any monies he received from Veritas in the form of a bonus or in profits from  
6 the sale of stock was on the basis of any materially false statements or omissions. He further  
7 denies that he misled or concealed material information from Veritas' outside auditors. Mr.  
8 Lonchar denies knowingly (1) falsifying or causing to falsify any of Veritas' books and records or  
9 (2) circumventing or failing to implement a system of internal controls. Finally, he denies aiding  
10 and abetting Veritas' violations of any statute or SEC rule or regulation.  
11  
12

13       3. Defendant Paul Sallaberry's Further Statement:

14       Mr. Sallaberry states that he did not participate in any fraudulent or illegal activity as alleged  
15 by the SEC. Mr. Sallaberry was not aware that the accounting treatment applied to the AOL  
16 transactions in question was incorrect, if in fact it was. Mr. Sallaberry did not falsify any  
17 corporate records, and he did not lie to, or conceal any information from, auditors. Mr. Sallaberry  
18 denies that the financial statements filed by Veritas were materially false or misleading, as the  
19 SEC has alleged. Further, Mr. Sallaberry denies that he possessed the necessary mental state to  
20 violate any of the securities laws – including, among other things, the requisite knowledge of the  
21 pertinent accounting rules and their resulting impact on Veritas' financial statements. Mr.  
22 Sallaberry further denies that he aided and abetted any alleged violations of any statute or SEC  
23 rule or regulation by Veritas.

24       C. Principal Facts in Dispute:

25       The Defendants believe the principal issues of fact in dispute will be: (a) whether Defendants  
26 made misstatements about Veritas Software Corporation's transactions with America Online,  
27 which were false and misleading when made; (b) whether the accounting for the AOL transaction  
28 was proper; (c) whether the statements were material; and (d) whether the Defendants acted with

1 the required scienter. Defendants further anticipate a dispute regarding whether the accounting  
2 treatment of the AOL deals was material to Veritas' financial statements, to the investment  
3 decisions of ordinary investors, or to Veritas' stock price.

4 Mr. Lonchar further believes that principal issues of fact in dispute concerning the SEC's  
5 additional allegations against him will be: (a) whether Mr. Lonchar directed or participated in any  
6 scheme to artificially increase or decrease Veritas' earnings or revenue; (b) whether Mr. Lonchar  
7 made statements concerning Veritas' financial results (including earnings and revenue) between  
8 2000 and 2002 which were false and misleading when made; (c) whether Mr. Lonchar signed a  
9 false and misleading certification in 2002; (d) whether the statements were material; and (e)  
10 whether Mr. Lonchar possessed the requisite mental state.

11 **3. Legal Issues:**

12 The Defendants dispute all allegations of securities law violations in the complaint.

13 Specifically:

- 14 a. Whether Defendants directly or indirectly made false or misleading statements or  
15 omitted to state facts necessary in order to make the statements not false or misleading;
- 16 b. Whether the challenged statements or omissions were material within the meaning of  
17 the securities laws;
- 18 c. Whether Defendants possessed the requisite mental state to establish liability for  
19 fraud;
- 20 d. Whether Defendants directly or indirectly knowingly falsified or caused to be falsified  
21 books, records, and accounts of Veritas;
- 22 e. Whether Defendants circumvented or failed to implement a system of internal  
23 controls;
- 24 f. Whether Defendants made or caused to be made materially false or misleading  
25 statements or omissions to Veritas' outside auditors;
- 26 g. Whether Defendants aided and abetted Veritas' alleged securities violations; and
- 27 h. Whether the SEC is entitled to the relief it has requested.

28

1       **4. Motions:**

2       There are no motions presently pending. Defendants Leslie, Lonchar, and Sallaberry  
3       intend to file motions to dismiss on October 5, 2007. The plaintiff may file motions to strike  
4       under Rule 12(f). The parties may move for summary judgment at the conclusion of discovery.  
5       Defendant Mark Leslie also will be giving consideration to filing a Motion to Sever his case at the  
6       appropriate time.

7       **5. Amendment of Pleadings:**

8       The plaintiff does not anticipate adding or dismissing any parties or claims.

9       **6. Evidence Preservation:**

10      The plaintiff has preserved all documents and other materials in its investigative file and will  
11      continue to do so throughout the pendency of the litigation. Similarly, all Defendants have  
12      preserved all documents and other materials in their possession, custody and control relevant to  
13      the issues reasonably evident in this action.

14      **7. Disclosures:**

15      **Plaintiff's Statement:**

16      On September 12 and 17, 2007, pursuant to Rule 26(a), the plaintiff produced to the  
17      defense a hardcopy of transcripts of SEC investigative testimony and SEC investigative testimony  
18      exhibits from its investigation from which this action arose. The parties will exchange initial  
19      disclosures on September 28, 2007. In addition, pending a further agreement on confidentiality  
20      and limitation on document use, as previously discussed with the defense, the plaintiff will  
21      produce to the defense electronic databases containing additional documents and other materials  
22      obtained in its investigation.

23      To date, despite requests by the Commission, the defense has not produced any documents  
24      pursuant to Rule 26(a). In addition, the Commission does not agree with the defense's assertion  
25      that "all of the non-privileged documents relevant to this lawsuit in connection with the SEC's  
26      investigation" have been produced to the Commission.

1                   Defendants' Statement:

2                   Defendants, through their counsel or counsel for Veritas, have already produced all of the  
 3                   non-privileged documents relevant to this lawsuit in connection with the SEC's investigation.  
 4                   Defendants have not concluded their investigation of the facts in this litigation and, other than as  
 5                   set forth above, additional documents may be found or may become relevant in the future.  
 6                   Defendants reserve the right to make additional disclosures in the future and to utilize any  
 7                   documents subsequently produced.

8                   **8. Discovery:**

9                   Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, counsel for the parties met  
 10                  on September 5 and 24, 2007 by telephone to discuss discovery issues and plans. Because the  
 11                  parties could not agree on various discovery issues and plans, the plaintiff and the defendants  
 12                  have set forth their separate proposals to the Court.

13                  The plaintiff respectfully requests a hearing before this Court on the disputed discovery  
 14                  issues and plans.

15                   Discovery/Trial 16                   Schedule	17                   SEC's Proposal	18                   Defendants' Proposal
19                   Settlement Conference/ 20                   Mediation	21                   October/November, 2007 (To be decided)	22                   March/April 2008
23                   Initial Case Management 24                   Conference	25                   October 5, 2007	26                   October 5, 2007
27                   Date first set of 28                   interrogatories/RFAs may be served	29                   No date necessary. Should be served consistent with the federal rules.	30                   January 15, 2008
31                   Hearing on Defendants' 32                   Motions to Dismiss	33                   January 18, 2008	34                   January 18, 2008
35                   Fact Depositions to Begin	36                   As soon as possible, but consistent with the federal rules.	37                   March 17, 2008
38                   Expert Disclosures (Rule 39                   26(a)(2)(a))	40                   September 12, 2008	41                   November 30, 2008
42                   Fact Discovery cut-off	43                   November 14, 2008	44                   February 27, 2009
45                   Initial expert reports (Rule 26(a)(2)(b))	46                   September 12, 2008	47                   February 13, 2009

1	Opposition expert reports due	October 13, 2008	March 13, 2009
2	Expert discovery cut-off	November 14, 2008	April 10, 2009
3	Dispositive motions filing deadline	December 5, 2008	April 30, 2009
4	Oppositions to dispositive motions filed	To be decided.	June 3, 2009
5	Hearing on dispositive motions	To be decided by court.	August 14, 2009
6	Trial (by jury) begins	March 23, 2009	September 14, 2009
7			

#### A. Plaintiffs' Discovery Proposal:

## Plaintiff SEC's Proposal on Depositions and Written Discovery:

**Depositions:**

Number of depositions: Plaintiff agrees to waive the 10-deposition limit under Rule 30.

12 While the plaintiff will endeavor to be as expeditious and efficient as possible in this litigation,  
13 the Commission anticipates that it will take more than 30 fact depositions to establish its various  
14 claims against the three non-settling defendants, Leslie, Lonchar, and Sallaberry. Limiting the  
15 plaintiff to only 30 depositions, as the defense proposes, will substantially prejudice the plaintiff's  
16 ability to establish its case in this litigation. Because the SEC's investigative testimony taken  
17 during the administrative investigation is not "depositions" within the federal rules, the  
18 Commission must undertake full discovery, including taking depositions, in this case to establish  
19 its case in litigation. The plaintiff disagrees with the defense's arguments and proposal regarding  
20 the plaintiff's discovery plan and proposal, including the number of depositions to be taken, and  
21 will be happy to address the issues fully at the appropriate forum such as a hearing regarding  
discovery.

23        Timing: The plaintiff believes that many of the depositions will require more than seven  
24 hours of examination in total by the plaintiff and the defense. As the plaintiff is continuing to  
25 review its case in litigation, the plaintiff would like to leave the number of depositions which will  
26 require more than 7 hours of examination open at this time. The plaintiff will work hard to make  
27 the depositions proceed expeditiously. The deposition time, however, should be split up equally  
28 between the SEC and the defense collectively; in other words, the SEC will be entitled to up to 7

1 hours and the defense collectively will be entitled to up to 7 hours per deposition. Unlike the  
2 three defendants, who are apparently operating under a joint defense arrangement, the  
3 Commission, as the sole plaintiff, has the burden of proof to establish all the claims set forth in  
4 the Complaint. Allowing the plaintiff to only ¼ of the time in a deposition (a little more than one  
5 hour of examination time in a seven-hour deposition) will substantially prejudice the plaintiff's  
6 ability to establish its case in this litigation. The plaintiff disagrees with the defense's arguments  
7 and proposal regarding this issue and will be happy to address fully the issues at a hearing  
8 regarding discovery.

9 Written Discovery: The plaintiff believes that the plaintiff and the defense collectively  
10 should have the same number of interrogatories and requests for admission. As noted above,  
11 unlike the three defendants, the Commission, as the sole plaintiff, has the burden of proof to  
12 establish all the claims set forth in the Complaint. Limiting the plaintiff to only ¼ of the total  
13 number of interrogatories and requests for admission will severely prejudice the plaintiff's ability  
14 to establish its case in this litigation. The SEC proposes that a maximum of 90 interrogatories  
15 and 90 RFAs for each side (90 for the plaintiff and 90 for the defense collectively). The plaintiff  
16 disagrees with the defense's arguments and proposal regarding this issue and will be happy to  
17 address fully the issues at a hearing regarding discovery.

18 **B. Defendants' Discovery Proposal:**

19 Rather than leaving open the number of depositions that may be taken in the case,  
20 Defendants propose to set a limit of thirty depositions per party, ten of which may exceed seven  
21 hours without further leave of court. Defendants believe that some depositions may need to  
22 exceed fourteen hours, and propose that ten of the thirty depositions per party may exceed that  
23 limit without further leave of court. For depositions that exceed seven hours, Defendants disagree  
24 that the SEC should be allotted seven hours of questioning no matter who notices the deposition.  
25 Instead, for all depositions, including those that are scheduled for more than seven hours,  
26 Defendants request that the noticing party be allotted up to half of the deposition time, with the  
27 remaining parties equally splitting the remaining time. Any party may transfer any or all of its  
28 allotted deposition time to another party. Defendants also disagree with Plaintiffs' proposal that

1 the SEC be permitted to serve 90 interrogatories and RFAs while each Defendant is permitted to  
2 serve only 30 RFAs and Interrogatories each. Finally, Defendants disagree with the SEC's  
3 proposed pre-trial and trial schedule.

4 The SEC has spent more than five years investigating Veritas' alleged dealings with AOL that  
5 form the basis for the Complaints against Mr. Leslie, Mr. Lonchar, and Mr. Sallaberry. During  
6 that time, the SEC has had not only its own resources to draw upon, but also the full cooperation  
7 of the company and its corporate counsel. The SEC has received and reviewed between thirteen  
8 and eighteen million pages of documents and has taken testimony from over 100 individuals.  
9 Moreover, unlike the typical civil plaintiff, the SEC has had the unique power to compel the  
10 production of documents and to subpoena witnesses for deposition – without prior permission of  
11 the court and without the imposition of any numerical cap. At no time did any of the defendants  
12 seek to place limits on the number of witnesses the SEC could depose.

13 Having completed its investigation – unfettered by scheduling constraints or numerical  
14 limitations – the SEC now seeks to unfairly limit Defendants discovery. None of the thirteen to  
15 eighteen million pages of documents in the SEC's possession have yet been produced to  
16 Defendants, and the SEC has only recently produced to Defendants transcripts of testimony and  
17 corresponding exhibits, in paper form only, for 129 witnesses. Given the scope of relevant  
18 information and the technical complexity of the alleged corporate malfeasance at issue, the SEC's  
19 proposed discovery limitations and schedule would unfairly constrain Defendants ability to  
20 properly and thoroughly investigate the case against them and prepare a vigorous defense to  
21 which they are entitled.

22 Defendants anticipate that the SEC will identify in its initial disclosures between 20 and  
23 50 individuals likely to have discoverable information relevant to its claims. The Defendants  
24 collectively anticipate identifying 50 to 100 such individuals. These witnesses will include the  
25 range of individuals involved in determining the accounting treatment of the AOL deals,  
26 including individuals internal to Veritas Software Corporation as well as outside auditors and  
27 other third parties. At this early stage of the discovery process, Defendants best good faith  
28 estimate is that they will need approximately 30 depositions and 50 interrogatories and RFAs

1 each to properly investigate the case against them and prepare a defense. Defendants also  
2 recognize that a number of documents important to their defense raise claims of attorney-client  
3 privilege that could generate time consuming litigation, as has happened in other similar cases.  
4 Such litigation could serve to delay the receipt of necessary documents and the scheduling of  
5 necessary depositions. The discovery schedule proposed by the defense allows sufficient time to  
6 resolve any disputes and conduct the necessary depositions and related fact discovery in an  
7 effective and orderly fashion.

8 **9. Class Actions:**

9 Not Applicable.

10 **10. Related Cases:**

11 For purposes of Local Rule 3-12, the plaintiff is unaware of any action related to this  
12 enforcement action.

13 **11. Relief:**

14 The Commission seeks the following relief:

15 a. **Injunctive Relief:** The Commission is seeking to:

16 (i) Permanently restrain and enjoin Leslie, Lonchar and Sallaberry from violating,  
17 directly or indirectly, Section 17(a) of the Securities Act, Sections 10(b) of the  
18 Exchange Act and Exchange Act Rule 10b-5;  
19 (ii) Permanently restrain and enjoin Leslie, Lonchar and Sallaberry from violating,  
20 directly or indirectly, Exchange Act Rules 13b2-1 and 13b2-2;  
21 (iii) Permanently restrain and enjoin Lonchar and Sallaberry from violating, directly or  
22 indirectly, Section 13(b)(5) and 13(b)(2)(B) of the Exchange Act;  
23 (iv) Permanently restrain and enjoin Leslie, Lonchar and Sallaberry from aiding and  
24 abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and  
25 Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13;

26 b. **Officer and Director Bar:** An order prohibiting Leslie, Lonchar and Sallaberry,  
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1 pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from serving as an  
2 officer or director of any entity having a class of securities registered with the Commission  
3 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports  
4 pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];  
5

6 c. Disgorgement: An order directing Leslie, Lonchar and Sallaberry to disgorge  
7 unlawful profits, including pre-judgment and post-judgment interest, resulting from the  
8 violations alleged in this Complaint. The amount of disgorgement may require detailed factual  
9 analysis and expert opinion.

10 d. Penalties: An order imposing civil monetary penalties on Leslie, Lonchar and  
11 Sallaberry, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)  
12 of the Exchange Act [15 U.S.C. § 78u(d)].

13 **12. Settlement and ADR:**

14 The parties have met and conferred regarding an ADR plan and have filed a Notice of  
15 Need for ADR Phone Conference. A phone conference has been scheduled for October 1, 2007.

16 Plaintiff's Statement:

17 The plaintiff would like to resolve this matter expeditiously, whether via settlement or  
18 trial. During the course of the SEC's investigation (prior to filing this action), the plaintiff has  
19 discussed and explained, at length, the nature of the proposed charges against all defendants to the  
20 same defense counsel. The plaintiff also discussed and explained, at length, the factual and  
21 evidentiary bases for the proposed charges against the defendants. Two of the defendants have  
22 had significant pre-filing settlement discussions with the plaintiff. The plaintiff thus believes that  
23 an early settlement conference with a judicial officer would be fruitful, before the parties and  
24 counsel expend tremendous amount of resources, time, and money for more than a year in very  
25 active litigation. The plaintiff respectfully requests such a settlement conference at the Court's  
26 earliest convenience, before the end of 2007.

1                   Defendants' Statement:

2                   At present, Defendants believe it will be necessary to develop at least the basic facts through  
3 discovery before there can be a realistic chance to settle the case. As noted above, Defendants  
4 have yet to receive the thirteen to eighteen million pages of documents the SEC anticipates it will  
5 produce. Defendants believe it will be fruitless to attempt settlement discussions before they have  
6 been given the opportunity to at least begin to evaluate the evidence. Defendants do not object to  
7 an early mediation in March or April of 2008, and preferably before a judicial officer but also  
8 recommend that the Court refer this case for a settlement conference with a judicial officer at a  
9 date after the completion of fact discovery.

10                  **13. Consent to Magistrate Judge For All Purposes:**

11                  The plaintiff respectfully does not consent to proceed before a magistrate judge.

12                  **14. Other References:**

13                  The plaintiff does not believe this case is suitable for binding arbitration. However, as noted  
14 above, the plaintiff recommends that a settlement judge be appointed at the Court's earliest  
15 convenience, before the end of this year -- 2007.

16                  **15. Narrowing of Issues:**17                  Plaintiff's Statement:

18                  The Plaintiff has not yet identified any issues that can be narrowed by agreement or  
19 motion. The plaintiff will oppose the defendants' motions to dismiss. The plaintiff does not  
20 agree that any severance by any defendant is necessary or appropriate.

21                  Defendants' Statement:

22                  Defendants will file on October 5, 2007 Motions to Dismiss the Complaint in its entirety, with  
23 prejudice. Should the complaint not be dismissed in its entirety, some narrowing of issues may  
24 be appropriate on such Motions. In addition, Mr. Leslie reserves his right to file a Motion to  
25 Sever his case at an appropriate later time. A significant number of the allegations in the  
26 Complaint do not pertain to Mr. Leslie as they post-date his tenure as CEO.

27                  **16. Expedited Schedule:**

28                  Defendants do not believe this case is suitable for expedited scheduling.

1 17. **Scheduling:**

2 **A. The Commission's Proposed Schedule:**

3 Last day for fact discovery: November 14, 2008

4 Last day to identify expert witnesses: September 12, 2008

5 Last day to complete expert discovery: November 14, 2008

6 Last day to file dispositive motions: December 5, 2008

7 Pre-trial conference: March 19, 2009

8 Trial: March 23, 2009.

9 **B. Defendants' Proposed Schedule:**

10 Please see chart at ¶ 7.

11 **18. Trial:**

12 The case will be tried to a jury. Plaintiffs estimate the trial will take 20 days and the  
13 Defendants estimate the trial will take 20-30 days.

14 **19. Disclosure of Non-party Interested Entities or Persons:**

15 The Parties are not aware of any non-party interested entities or persons.

16 **20. Other Matters:**

17 In keeping with Federal Rule of Civil Procedure 26, the Commission proposes an order  
18 regarding claims of privilege or of protection as work-product or trial-preparation material  
19 asserted after production, as follows:

20 a. To facilitate the expeditious delivery of documents and other information, the parties  
21 agree that the inadvertent disclosure of materials that are protected by any valid claim of  
22 privilege, or as trial preparation material or work-product, will not by itself constitute a waiver of  
23 such privileges or protections.

24 b. Whenever any receiving party learns, through review of the material, notice from  
25 another party, or otherwise, that materials which reasonably appear to be subject to protections by  
26 a claim of privilege, or as trial preparation material or work-product, have been inadvertently  
27 produced by another person, the party receiving the material will refrain from examining the  
28 materials any more than is essential to ascertain if the materials are privileged, and shall

1 immediately notify the producing person that the receiving party possesses material that appears  
2 to be privileged or subject to such other protections. If upon such notification the producing party  
3 asserts a privilege or protection, the receiving party will destroy all copies and notify the  
4 producing person whether any copies may have been reproduced to any other persons.

5 c. Whenever any producing party discovers through review of the material, notice from  
6 another party, or otherwise, that the party has inadvertently produced material over which the  
7 party claims a privilege, or protections as trial preparation material or work-product, the  
8 producing party shall immediately notify all persons to whom the material was produced of the  
9 inadvertent disclosure, by: providing a reasonable means for the notified persons to locate the  
10 material (by bates number, date, or other description); and describing the nature of the privilege  
11 or other protection asserted.

12 d. In order for any inadvertent disclosure to constitute a waiver, the receiving party must  
13 have changed his position by incorporating the material into his trial preparation in reasonable  
14 reliance on the non-privileged or non-protected nature of the document.

15 e. The parties agree not to disclose materials gathered through the discovery process other  
16 than for purposes related to this litigation (SEC v. Leslie, et al., Civil Action No. C 07-3444 JF);  
17 however, this provision will not prohibit the SEC from disclosing what is otherwise required by  
18 law or is otherwise permissible disclosure pursuant to the terms of the SEC's Form 1662;

19 f. In any written discovery or documents filed with the Court in this litigation (SEC v.  
20 Leslie, et al., Civil Action No. C 07-3444 JF ), the parties agree to redact from such Court  
21 submissions information which contains defendants' sensitive personal information, such as social  
22 security numbers, home addresses and home and personal telephone numbers; confidential  
23 financial information, such as bank account and brokerage account numbers; or state and federal  
24 income tax information, including tax forms; and

25

26

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1                   g. The parties agree not to deviate in any manner from the provisions of (a) through (f)  
2 of this paragraph without further leave of court.

3

4                   Respectfully submitted,

5

Dated: September 28, 2007

/s/ Richard Hong

6

Richard Hong  
Counsel for Plaintiff Securities and Exchange  
Commission

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Dated: September 28, 2007

/s/ with permission

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William P. Keane  
Counsel for defendant Mark Leslie

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Dated: September 28, 2007

/s/ with permission

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Susan D. Resley  
Counsel for defendant Kenneth E. Lonchar

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Dated: September 28, 2007

/s/ with permission

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